IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.493 OF 2003

1. Smt. Kishori Shivram Parab,
   Age 32 years, Occ. Housewife,
   Resident of Matond, Gandachi
   Rai, Post Mathond, Tal. Vengurla,
   District Sindhudurg.
2. Smt.Rajashtree Ramakant Parab,
   Age 40 years, Occu. Housewife,
   resident of Matond, Madhla Wada,
   Post Matond, Tal. Vengurla,
   District Sindhudurg. ...Petitioners.

Vs.

1. Tehsildar Vengurla,
   Office of Tehsildar, Vengurla,
   District Sindhudurg.
2. District Collector Sindhudurg,
   Office of Collector, at Oros,
   District Sindhudurg.
3. The State of Maharashtra,
   through Dept. Rural and
   Irrigigation, Mantralaya,
   Mumbai-400 032.
4. State Election Commissioner,
   having office at Administrative
   Building, Opp.Mantralaya,
   Mumbai-400 032.
5. Gram Panchayat Matond,
   through Administrator, Matond,
   Tal.Vengurla, Dist. Sindhudurg. ...Respondents.

....

Mr. C.G. Gavnekar with Mr. G.S. Hiranandani & Ms. Deepa Sawant for the Petitioners.
Mrs. M.P. Thakur, AGP for Respondent Nos.1 to 4.

.....

**CORAM : F. I. REBELLO AND**
**DR.D.Y.CHANDRACHUD, JJ.**

**January 17, 2006.**

**ORAL JUDGMENT (Per Dr. D.Y. Chandrachud, J.):**

In the Taluka of Vengurla, there were 27 Grampanchayats. Out of Khanoli and Matond, two additional Grampanchayats, namely Pendur and Vayangani came into existence. The total number of Grampanchayats consequently was increased to 29. Prior to the increase, in the year 2000, reservations had been drawn up under which the posts of Sarpanch were reserved in two Grampanchayats for the Scheduled Castes and Scheduled Tribes, in seven for the Other Backward Classes, while in the case of six Grampanchayats, posts of the Sarpanch were to be reserved for women. The balance twelve Grampanchayats were to have Sarpanchas from the general category. After two more Grampanchayats were added, the Tahsildar Vengurla decided to alter the reservations by taking into consideration the enlarged number of Sarpanchas available after the division of the existing Grampanchayats. It has been stated that the Tahsildar stipulated that the post of Sarpanch of Village Matond which was originally reserved for the Other

Backward Classes should now be reserved for women. On 21st September 2002 a meeting was held by the Tahsildar stipulating a revised set of reservations.

2. Elections were held for eleven members of the Grampanchayat of Matond for which the Grampanchayat came to be divided into four wards. The Petitioners are all women from the open category. On 17th January 2003, the Additional Collector, Sindhudurg held a meeting at which it was informed that the election to the office of the Sarpanch would not take place on the basis of the order passed by the Tahsildar on 21st September 2002. The grievance of the Petitioners is that as a result, the order of the Tahsildar by which the office of the Sarpanch of the Grampanchayat of Matond was reserved for women, was rescinded and the office came to be reserved for a person belonging to the Other Backward Classes. That decision has been challenged in these proceedings under Article 226 of the Constitution. The grievance of the Petitioners is that when they contested the election to membership of the Grampanchayat, there was an expectation of the office of the Sarpanch being reserved for women; but that expectation was belied by the subsequent

decision.

3. An affidavit in reply has been filed in these proceedings in which it has been stated that elections for the posts of Sarpanch and Upa Sarpanch have been completed on 30th January 2003 and both the Sarpanch and Upa Sarpanch have accordingly been appointed. It has been averred that as a result of the bifurcation of the Grampanchayats of village Matond and village Khanoli, two new Grampanchayats of Pendur and Vayangani came into existence. As a result of this increase in the number of Grampanchayats, reservations for the posts of Sarpanch had to be modified. The Tahsildar had drawn fresh lots and decided upon the reservation for the four Grampanchayats on 21st September 2002. However on 17th January 2003, a districtwise reservation was carried out in accordance with a communication dated 26th December 2002 of the Rural Development and Water Conservation Department. This was decided by the District Collector consequent upon which the earlier reservation prescribed by the Tahsildar in the meeting dated 21st September 2002 was cancelled.

4. Upon the Seventy Third amendment to the Constitution,

consequential amendments were carried out by the State Legislature to the provisions of the Bombay Village Panchayats Act, 1958. Section 10(2)(a) of the Bombay Village Panchayats Act, 1958, provides that in the seats to be filled in by election in a Panchayat there shall be seats reserved for persons belonging to the Scheduled Castes, Scheduled Tribes, Backward Class of citizens and women, as may be determined by the State Election Commission in the prescribed manner. The seats reserved for the Scheduled Castes and the Scheduled Tribes are required to bear the same proportion to the total number of seats to be filled in by direct election in that Panchayat as the population of the Scheduled Castes, or as the case may be Scheduled Tribes, in that Panchayat area bears to the total population of that area and such seats shall be allotted by rotation to different wards in a Panchayat. (Section 10(2)(b)). The seats reserved for persons belonging to the category of Backward Class of citizens shall be 27 per cent, of the total number of seats to be filled in by election in a Panchayat. (Section 10(2)(c)). One-third of the total number of seats to be filled in, including the number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and Backward Class of citizens to be filled in are reserved for

women.

5. Section 30 of the Act deals with the election of the Sarpanch and under sub-section (4) thereof, a reservation has been provided for members belonging to the Scheduled Castes, the Scheduled Tribes, the Backward Class of citizens and women. Clauses (a), (b) and (c ) of sub-section (4) of Section 30 provide for the extent of reservation in the following terms:

> "(a) The number of offices of Sarpanchas to be reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State excluding the population of the Scheduled Tribes in a panchayat comprising entirely the Scheduled Areas bears to the total population of the State;
>
> ...
>
> Provided further that, the office of the Sarpancha of a panchayat falling only partially in the Scheduled Areas shall be reserved for the persons belonging to the Scheduled Tribes in accordance with the provisions of clause (a):
>
> ...
>
> -(b) The offices of Sarpanchas to be reserved for persons belonging to the category of Backward Class of citizens shall be 27 per cent, of the total number of such offices in the Panchayats:

> Provided that, one-third of the offices so reserved shall be reserved for women belonging to the category of Backward Class of citizens.
>
> -(c) One-third of total number of offices of Sarpanchas (including the number of offices reserved for women belonging to the Scheduled Castes, the Scheduled Tribes and the category of backward Class of citizens) in the Panchayats shall be reserved for women."

The number of offices reserved are to be allotted by rotation to different Panchayats under sub-section (5).

6. The Bombay Village Panchayats (Sarpanch and Upa Sarpanch) Election Rules, 1964 have been made by the State Government in exercise of the rule making power conferred by the parent legislation. For the purposes of these proceedings, it has become necessary for the Court to interpret and expound upon the scheme and provisions contained in the Rules. The first stage that is conceived consists of a Statewise reservation of seats by the State Government for the Scheduled Castes, the Scheduled Tribes, Backward Class of citizens and Women. Sub-rule (1) of Rule 2A provides thus:

> "(1) The State Government shall by notification in the Official Gazette, specify the number of offices of

> Sarpanchas in the Village Panchayats, other than the Village Panchayats comprising entirely the Scheduled Areas, in the State to be reserved for the Scheduled Castes, the Scheduled Tribes, the category of Backward Class of citizens and women including the women belonging to the Scheduled Castes, the Scheduled Tribes, and the category of Backward Class of citizens."

Sub-rule (1) speaks of the specification of the number of offices of Sarpanchas in the village Panchayats to be reserved in the State for the diverse classes referred to therein.

7. The next step that is contemplated by the Rules is the allotment by the State Government of the offices of Sarpanchas to be reserved for these diverse classes among the Districts. That takes place in accordance with the provision of sub-rule (2) which is as follows :

> "(2) The State Government shall, by notification in the Official Gazette, allot the offices of Sarpanch to be reserved for the Scheduled Castes, the Scheduled Tribes, the category of Backward class of citizens and women as specified under sub-rule (1), to districts as follows :
>
> -(a) The offices to be reserved for the Scheduled Castes and Scheduled Tribes in each District shall be allotted in such manner that such reservation shall bear as nearly as may be, the same proportion to the total number of offices of Sarpanchas in the district as the population of the Scheduled Castes and Scheduled Tribes in that District bears to the total population of that district:

> (b) The offices to be reserved for the category of Backward Class of citizens in each District shall, as far as practicable be allotted in proportion of twenty seven per cent of the total number of offices of Sarpanchas in that district.
>
> (c) The offices to be reserved for the women (including the women belonging to the Scheduled Castes, the Scheduled Tribes and the category of Backward class of citizens in each District shall, as far as practicable, be allotted in proportion of one-third of the total number of offices of Sarpanchas in that district:"

8. Thus, for each district, the offices to be reserved for the Scheduled Castes and the Scheduled Tribes are to be allotted in such manner that the reservation shall bear the same proportion to the total number of offices of the Sarpanchas as the population of the Scheduled Castes and the Scheduled Tribes in that District bears to the total population of the District. The proportion of reservation for Backward Classes is 27 per cent. The offices to be reserved for women must be to the extent of one-third, including women belonging to the Scheduled Castes, the Scheduled Tribes and the Backward Classes of citizens.

9. In the next step, it is the office of the Collector which comes into function. Under sub-rule (3), the Collector has to

distribute and notify among the Tahsils (i) The offices of the Sarpanchas reserved for Scheduled Castes and the Scheduled Tribes; and (ii) The Offices of the Sarpanchas reserved for the Backward Classes. The distribution in so far as the Scheduled Castes and the Scheduled Tribes is concerned, follows the proportion of both the categories in total population of the Tahsil and for the Backward Classes, the proportion is fixed at 27 per cent.

10. By sub-rule (4) of rule 2A, an allotment is made by the Collector of the offices of the Sarpanchas in the District to be reserved for women including those belonging to the Scheduled Castes, the Scheduled Tribes and Backward Class. For this purpose lots have to be drawn by the Collector according to the instructions of the State Government. Lots in respect of women belonging to the Scheduled Castes, the Scheduled Tribes and Backward Classes have to be drawn only among the offices of the Sarpanchas which are reserved for these categories. While rotating such offices in subsequent elections, Panchayats where such offices were already reserved in earlier elections for women have to be excluded until reservation has been provided in all

Panchayats by rotation.

11. In so far as the role of the Tahsildar is concerned, that is limited to sub-rules (5) and (6) of Rule 2A under which it is provided as follows :

> "(5) The Tahsildar, by order, shall reserve the offices of Sarpanchas for the persons belonging to the Scheduled Castes and Scheduled Tribes, in a descending order, beginning with the panchayat where the percentage of population of such Castes or Tribes is the highest amongst the panchayats in the Tahsil;
>
> Provided that, the offices of the Sarpanchas to be reserved shall be rotated in the subsequent elections, to the panchayats in the Tahsil where no such offices have been reserved for the Scheduled Castes or Scheduled Tribes until in all the panchayats reservation of offices for such Castes and Tribes is given by rotation.
>
> -(6) The Tahsildar, by order, shall reserve the offices of the Sarpanchas for persons belonging to the category of Backward Class of citizens by drawing lots, according to the instructions given by the State Government from time to time among the panchayats in the Tahsil.
>
> Provided that while drawing lots the panchayats where the offices of Sarpanchas are reserved for the Scheduled Castes and the Scheduled Tribes in the Tahsil shall be excluded:
>
> Provided further that, the offices of Sarpanchas to be reserved shall be rotated in the subsequent elections to the panchayats in the Tahsil in which no such offices have been reserved for such category until in all such panchayats in the Tahsil

> reservation of offices for such category is given by rotation."

In other words, upon the distribution and notification of reserved offices by the Collector among the Tahsils under sub-rule (3), it is for the Tahsildar thereafter to reserve the offices among the panchayats, commencing with the Panchayats where the population of the Scheduled Castes or Tribes is highest among the Panchayats in the Tahsil. In so far as backward class of citizens is concerned, that is to be done by drawing lots.

12. The Rules which have been framed under the Bombay Village Panchayats Act, 1958, prescribe the definite role of different levels of governmental authority beginning with the State Government under sub-rule (1) of rule 2A and involving in subsequent stages the Collector and the Tahsildar. In so far as reservation for women is concerned, it is described as one-third of the total number of offices of Sarpanchas in each District. In the first instance it is for the State Government to make an allotment under sub-rule (2) of Rule 2A which is followed by an allotment by the Collector of the offices of Sarpanchas in the District to be

reserved for women.

13. In the present case we do not find any infirmity in the decision taken by the Collector to rescind the decision of the Tahsildar. The Tahsildar acted contrary to the Rules in overstepping his authority. Therefore, the Collector had stepped in to correct his action. Elections have been held in the present case. However, having regard to the importance of the matter and to ensure that the specification, allotment, distribution and, as the case may be, notification takes place in future in a manner consistent with the rules, we have considered it appropriate to lay down the interpretation of the rules. The Petition shall stand accordingly disposed of. No order as to costs.

( F. I. Rebello, J.)

( Dr.D. Y. Chandrachud, J.)